

IN THE USPTO

**Appn. Number : 10/021,656
Applicant : Gary C. Johnson
Appn. Filed : 12-12-2001
Art Unit : 3681**

REMARKS - 1

CONCERNING : Office Action of; 6-28-05,

Concerning, "Response to Amendment" (page-2);

(1) The Examiner, in his use of the wording and term; "new matter", would give an applicant the distinct impression that "new matter" is any additional wording.

This is absolutely untrue. the term "new matter", actually pertains to new "subject" matter. Additional descriptive wording doesn't equate to additional subject matter. The more descriptive wording; the more specific and narrower the subject matter becomes. The Examiner has formulated his own meaning. The following are quotations from the Manual for Patent Examination Procedure (MPEP):

MPEP-2163. 07 (a); " By disclosing in a patent application a device that inherently performs a function or has a property, operates according to a theory or has an advantage, a patent application necessary discloses that function, theory or advantage, even though it says nothing explicit concerning it. The application may later be amended to recite the function, theory or advantage without introducing prohibited "new matter".

MPEP-2163.07 (sec. II); "An amendment to correct an obvious error does not constitute "new matter" where one skilled in the art would not only recognize the existence of error in the specification, but also the appropriate correction."

REMARKS – 2

MPEP-2163.06; Information contained in any one of the specification, claims or drawings of the application as filed may be added to any other part of the application without introducing “new matter.”

MPEP-903.02 (b), fifth paragraph; “Features may be added to the basic subject matter which do not change the character thereof but do perfect it for its intended purpose.”

(2) The said new matter (alleged) of:

(a) The line; “by way of the outward protruding axial stock of case 8”, does reflect and correlate to a drawing correction that I made / presented. However, it is an obvious error, see; MPEP 2163.07 (sec. II). A person skilled in the “art” would know this and would recognize the appropriate correction. As evidence, I have presented the front page with drawing(s), of several patents that likewise have the same inherent feature; “outwardly protruding axial stock.” Here are the patent numbers of some (relying first on those cited by the examiner); as said evidence: 5,176,589, 5,370,588, 6,120,407, 4,819,512, and 3,768,336. Also, notice that the character number of the support stock and its associated housing, are almost always the same; because one is usually inherent to the other.

Furthermore, the said protruding axial stock, doesn’t change the; “function”, “character”, nor scope of the claims. It is merely an inherent support member.

(b) The line; “Shaft 23, being rotatively supported by the housing 25.”

In the Drawing of the invention, the shaft 23 is being supported in the housing 25. The housing 25 is shown fragmented; which is allowed. The shaft 23 would obviously be rotatively / rotatably supported. It’s a drive shaft. Invalid objection.

REMARKS – 3

(c) The said (by the Examiner) “everything after “(b)” on page 3” of the;
“Detailed Description of the Invention.”

This objection to the said every thing after “(b)” on page 3, is misleading, because; it doesn’t explain why this portion of the description is objected to. Particularly since it is not made clear whether or not this the Examiner meant to include or exclude paragraph “(b)” itself. The Examiner could have simply stated; everything beginning after paragraph “(c)” on page 3 or said; everything beginning with and after paragraph “(b)”. However I perceived that the Examiner was referring to the functional portion of my description apart from the structural part. The objection / require is not only fundamentally wrong but, compliance with said objection would jeopardize my patent application in an interference proceeding; with regard to actually having had possession of the claimed invention.

Also, the requirement by the Examiner for me to eliminate everything after “(b)”, would place my application out of requirement with 37 CFR 1.71-Detailed description and specification of the invention.

37 CFR 1.71 (b), second paragraph; “The specification must set forth the precise invention for which a patent is solicited, in such manner as to distinguish it from what is old. It must describe completely a specific embodiment of the process, machine, manufacture, composition of matter or improvement invented, and must explain the mode of operation or principle whenever applicable.”

Furthermore, according to; MPEP-2163.07 (a), “A application necessarily discloses that function, theory or advantage, even though it says nothing explicit concerning it. The application may later be amended to recite the function, theory or advantage without introducing prohibited new matter.” The examiner didn’t realize that the said everything after “(b),” is the equivalent to said inverse rotation.

REMARKS – 4

Concerning, “Drawing(s)” of Office Action; 6-28-05;

(1) The Examiner objected to “every” correction that I made in the Drawing, “particularly those on shaft 5”, he; referring to them as “new matter.”

Again, I point out the erroneous perspective of the Examiner concerning new “subject” matter, particularly; the lines of invisibility added to “shaft 5”.

MPEP – 2163.06; “Information contained in any one of the specification, claims or drawings of the application as filed may be added to any other part of the application without introducing “new matter.”

Concerning the invisibility lines added to “shaft 5”, these said lines are to show that the bevel gear 12 is splined / stationary to the axle shaft 5.

I know that deleted material can not be specifically referred to once deleted.

However, if the Examiner will notice on page 2; lines 9 and 10 of the Detailed Description of the Invention; this portion of the description wasn’t objected to.

He would find this sentence; “The bevel gear 12 is splined / stationary to the axle 5.

(2) The Examiner disallowed “OBVIOUS ERRORS”; MPEP – 2163.07; Sec. II, such as; missing hatch lines and a missing feature that doesn’t pertain to function. The missing feature being; added support stock. Corrections are disallowed, when they affect the claims or can not be supported by other parts of the application.

Concerning, the “Oath / Declaration”

(1) The Examiner states; “no Summary of the Invention” exists in the application”.

The “Summary of the Invention” is on page 2 of 3, of the published application.

REMARKS – 5

Concerning expediency, According to:

MPEP-1301-Substantially Allowable Application, Special, and

**MPEP-2730 (B) – GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION
PENDENCY, and**

MPEP-714.05 (E) – Examiner Should Immediately Inspect, and

MPEP – 708.01 (B), (G) – List of Special Cases, and

MPEP – 707.02 – Applications Up for Third Action and 5-year Applications.

My application should still be handled promptly.

By the way, it has been 19 months between this present Office Action (6-28-05) and the one prior to it (10-16-03). A result of a “Premature Final Rejection”, by the Examiner. Which was based not on Prior Art or some other pertinent matter, but a common matter of procedure; concerning an ordinary amendment, that should have been sent to the appropriate office, as it eventually was.

Furthermore, I am quite aware that my Appeal of; 12-16-03 was evaded. The Appeal Brief was mistakenly sent with a RCE form (request for continued examination). However, the PTO decided that I wanted a continued examination and terminated my Appeal. I’ll be better prepared this time. i have a basic understanding of an Appeal Brief format. I realize that the Examiner can dictate by his action, whether or not the next response will be Appealable or Petitionable. I am fully aware that if the response affects the claims; then I can Appeal. What I have discovered is extremely valuable, I won’t be intimidated, by anything.

REMARKS – 6

Most people don't realize that, an invention has to be shown to work in order for the Paten Office to do a (world wide) search for "Prior Art", or that; "Prior Art", refers to; field of Art. My differential isn't an improvement it's perfection of the unit.

It can be made to fit in the same vertical amount of space, has dual drive systems, is self contained, self controlling, will always rotate both drive wheels as if they were on dry pavement, lets the drive wheels turn at different ratios/speeds when they need to, has an anti roll-back feature, is fairly simple in design, is ideal for "any" size vehicle, but most importantly, is the absolutely the first to perform all of these functions, using all gear drive parts. This differential idea of mine makes obsolete:

- (a) Limited Slip differentials
- (b) Locking differentials
- (c) Electronic Traction Control
- (d) Posi –Tract rear ends

I am probably the only Black man to have made it alone through the patent system without being defeated. It was Suggested again that I seek the help of an attorney.

No Attorney's that I went to would take my case. One called it a "conflict of interest". They didn't say with whom.

The auto companies that I sent this to, particularly the one that refused to acknowledge what I had sent. But, I know they can't allow any version of theirs to be revealed until my patent application is stopped or abandoned, because my patent application has priority. I was born in 1958, I have the energy. But, Bob Kerns life was made shorter by his legal conflict. Hopefully I won't have as of a struggle. Mine is not a wind shield wiper.

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